Tripura High Court
Shri. Bishu Kumar Tripura vs The State Of Tripura on 16 March, 2022

HIGH COURT OF TRIPURA
AGARTALA
WP(C)(HC) No. 04 of 2021

Shri. Bishu Kumar Tripura
Son of Shri Malindra Tripura, resident of Lalmaibari, Padmalochan High School, PS-Melagharh, District-Sepahijala, Tripura.

----- Petitioner(s)

Versus

1. The State of Tripura,
   represented by the Secretary to the Government of Tripura, Home Department, having his office at Secretariat Complex, PO Kunjaban, PS New Capital Complex, Sub-Division-Agartala, District West Tripura.
2. The Secretary,
   Government of Tripura, Home Department, having his office at Secretariat Complex, PO Kunjaban, PS New Capital Complex, Sub-Division-Agartala, District West Tripura.
3. The Deputy Secretary,
   Government of Tripura, Home Department, having his office at Secretariat Complex, PO Kunjaban, PS New Capital Complex, Sub-Division-Agartala, District West Tripura.
4. The Director General of Police,
   Tripura, Police Headquarters, Fire Brigade Chowmohani, PS-West Agartala, PO & Sub-Division-Agartala, District West Tripura.
5. The Advisory Board,
   Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, Tripura, represented by its Secretary.
6. The Union of India,
   represented by the Secretary to the Ministry of Home Affairs, Government of India, South Block, New Delhi-110001

----- Respondent(s)

For Petitioner(s)	:	Mr. Sankar Lodh, Adv.
For Respondent(s)	:	Mr. S.S. Dey, Advocate General. Mr. Bidyut Majumder, Asstt. SG. Mr. Ratan Datta, P.P. Mr. S. Debnath, Addl. P.P. Ms. A. Chakraborty, Adv.
Date of Hearing	:	8th February, 2022.
Date of Pronouncement	:	16th March, 2022.
Whether fit for reporting	:	YES

B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

[Per S.G. Chattopadhyay], J

The petitioner, hereinafter referred to as the detenu, has been detained pursuant to order No.F.15(9)-PD/2021(P-II)/2330 dated 20.08.2021 (Annexure-1 to this petition) issued by the Home Secretary to the Government of Tripura in exercise of powers conferred under sub section (1) of section 3 of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (for short PITNDPS Act). [2] The grounds of detention as disclosed in the impugned order dated 20.08.2021 are as under:

> [1]. From the records submitted by the Director General of Police, Tripura, it has appeared that Shri Bishu Kumar Tripura S/O Shri Malindra Tripura of Lalmaibari, Near Padmalochan High School, PS-Melagarh, Sepahijala District was involved in the following cases:
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> (i) Melagarh PS case No. 2020MLG028 dated 19.06.2020 under sections 148/149/353/325/427/307, IPC and section 3 of Prevention of Damage to Public Property Act and sections 20(b)(ii)(C)/29, NDPS Act.
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> (ii) Manu PS case No.2021MNU004 dated 30.01.2021 under sections 20(C)/29(i) of NDPS Act and, it has appeared that he is still operating through the help of his associates and supporters in transportation of NDPS articles.

[2]. The records have also disclosed that he is a repeated offender and is continuously doing illegal activities regarding transportation of NDPS articles. This is very dangerous for the society at large where several youths are heading towards drug addiction, which further decreases the national productivity in all walks of life. Despite arrest in different cases said Shri Bishu Kumar Tripura S/O Shri Malindra Tripura of Lalmaibari, Near Padmalochan High School, PS-Melagarh, Sepahijala District did WP(C)(HC) No. 04 of 2021 Page - 3 of 18 not mend his ways and is continuously spoiling the future generation.

[3]. The person is still active in illicit trafficking of NDPS articles as revealed from field information but could not be arrested red- handed again and issue of detention order under PITNDPS will also help Police in initiating financial investigation laid down under Chapter-V(A) of NDPS Act.

[4]. It is essential to keep Shri Bishu Kumar Tripura behind the bars in the national interest since this drug addiction not only spoil the individual drug addict but also spoils the career of youths. Under the influence of drugs, youths are easily motivated toward social crimes which may further lead to communal violence, hatred among communities and even international tensions, since

Tripura is having Indo-Bangladesh border. This drug addiction encourages youths to commit crimes like snatching, theft of bike, burglary, dacoit etc. when they need money to fulfill their urge for drug.

[5]. From the statement of witnesses and from the records, it has transpired that Shri Bishu Kumar Tripura has accumulated huge property at Bishramganj and Melagarh which appears to be disproportionate to his known source of income.

[6]. The Director General of Police, Tripura has proposed to prevent Shri Bishu Kumar Tripura S/O Shri Malindra Tripura of Lalmaibari, Near Padmalochan High School, PS-Melagarh, Sepahijala District from continuing his harmful and prejudicial activities by engaging himself in illicit traffic of narcotic drugs and psychotropic substances in the interest of society. [3] The detenu was made aware of the grounds of detention and copies of the documents relied on by the detaining authority along with the detention order was duly served on the detenu. He made a representation dated 28.08.2021 [Annexure-9 to the writ petition] to the detaining authority. The said representation was rejected by the State Government and the rejection order dated 18.09.2021 was communicated to the detenu by the Home Secretary to the Government of Tripura [Annexure-10 to the writ petition]. Thereafter, the State Government vide. No.15(9)-PD/2021(P-II)/2627 dated 14.09.2021 made a reference in WP(C)(HC) No. 04 of 2021 Page - 4 of 18 respect of the matter to the State Advisory Board in terms of section 9(b) of the PITNDPS Act. The Advisory Board opined that there were sufficient causes for the detention of the petitioner. Pursuant to report dated 06.11.2021 of the State Advisory Board, the State Government in exercise of power conferred under section 9(f) read with section 11 of the PITNDPS Act confirmed the detention order for a period of 1(one) year w.e.f. the date of his detention by order No.F.15(9)-PD/2021(P-II)/3283 dated 11.11.2021 (Annexure-12 to the writ petition) issued by the Home Secretary.

[4] The detenu has structured his challenges to the detention order mainly on the following grounds:

(i) The orders whereunder the detenu was granted bail in Melagarh PS case No.2020/MLG/028 and Manu PS case No.2021 MNU 004 prior to the issuance of the detention order were not placed before the detaining authority.

(ii) Non placement of these vital documents before the detaining authority and non consideration of the same by the detaining authority has vitiated the detention order because those were necessary to arrive at a subjective satisfaction as contemplated under sub section (1) of section 3 of PITNDPS Act for issuing detention order.

[5] In the counter affidavit filed on behalf of State respondents 1, 2, 3 and 4 by the Deputy Secretary, Home, Government of Tripura on 20.12.2021, it has been asserted that the detenu is a drug peddler against WP(C)(HC) No. 04 of 2021 Page - 5 of 18 whom several cases have been registered. It is stated that the investigating agency has already laid charge sheet against him in Melagarh PS case No.2020/MLG/028 and Manu PS case No.2021 MNU 004. In the third case lodged as Bishalgarh PS case No.2021 BLG 059 under sections 20(b)(ii)(C) and sections 25, 27A, 29 and 32, NDPS Act, he has been granted pre arrest bail by the High Court on 20.08.2021 and the State Government has

decided to challenge the order in SLP before the Honble Supreme Court. Further averment made on behalf of the State respondents is that invocation action of the provisions of PITNDPS Act against the detenu was felt necessary to deter him from repeating commission of offences under the NDPS Act. It has also been asserted by the State respondents that there is no merit in the petition because all procedural safeguards prescribed under the law has been followed by the detaining authority by affording earliest opportunity to the detenu for making an effective representation against the detention order and the matter was also referred to the advisory board within the timeframe prescribed under the law and pursuant to the report of the State advisory board the detention order was confirmed by the State Government.

[6] A Separate counter affidavit was filed on behalf of Union of India (respondent No.6) by B.S. Meena, Under Secretary to the Government of India in the Department of Revenue, Ministry of Finance contending that the State Government forwarded the detention order to the Central Government in terms of sub section (2) of section 3 of PITNDPS Act within WP(C)(HC) No. 04 of 2021 Page - 6 of 18 the time stipulated under said sub section (2). It was received by the Ministry of Home Affairs of the Government of India on 26.08.2021 which, in turn was forwarded to the Department of Revenue, Ministry of Finance. It was asserted in the counter affidavit filed by respondent No.6 that there were no breach of safeguards provided to the detenu under Article 22 of the Constitution.

[7] Notice was also served on State Advisory Board (respondent No.5) but no counter affidavit was filed on behalf of the said respondent. [8] We have heard Mr. Sankar Lodh, learned advocate for the petitioner and Mr. S.S. Dey, learned Advocate General appearing for the State along with Mr. R. Datta, learned P.P, Mr. S. Debnath, learned Addl. P.P and Ms. A. Chakraborty, advocate.

[9] Mr. Lodh, counsel appearing for the petitioner has argued that the detention order passed by the detaining authority is liable to be quashed mainly because bail orders whereunder detenu was released on bail in Melagarh PS case No.2020/MLG/028 and Manu PS case No.2021 MNU 004 were not placed before the detaining authority and non consideration of the bail orders vitiated the subjective satisfaction of the detaining authority. To buttress his arguments, Mr. Lodh, learned counsel has relied on the decision of the Apex Court in Rushikesh Tanaji Bhoite vs. State of Maharashtra & Ors. reported in (2012) 2 SCC 72 wherein the Apex Court observed that in a case where the detenu was enjoying his freedom under the bail order passed by the court, at the time of passing the WP(C)(HC) No. 04 of 2021 Page - 7 of 18 order of detention, such bail order must have to be placed before the detaining authority to arrive at proper satisfaction about the need of preventive detention. Counsel has relied on the following observation of the Apex Court in paragraph 9 and 10 of the judgment:

> "9. In a case where the detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

> 10. In the present case, since the order of bail dated 15-8-2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority."

[10] Counsel has further argued that preventive detention actually tantamounts to punishment without trial. Therefore, detaining authority must record its subjective satisfaction in the detention order as to why issuance of the preventive order was necessary. Counsel submits that recourse to preventive detention cannot be taken as a substitute to an ordinary law and where recourse to criminal proceedings would be sufficient to deal with the crime committed by the detenu, preventive detention is not permissible. Counsel has derived support to his contention from the decision of the Apex Court in the case of Rekha vs. State of Tamil Nadu through Secretary to Government & Anr. reported in (2011) 5 SCC 244 and the decision of the Apex Court in Munagala Yadamma vs. State of WP(C)(HC) No. 04 of 2021 Page - 8 of 18 Andhra Pradesh & Ors. reported in (2012) 2 SCC 386. In the case of Rekha (Supra) the Apex Court observed as under:

> "29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.
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> 30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal."

[11] Mr. Lodh, learned counsel contends that in the case of Munagala Yadamma (Supra) the ratio decided in the case of Rekha (Supra) was reiterated and it was held that where the offences complained of, can be dealt with under the ordinary law of the land, recourse to the provisions of preventive detention is contrary to the Constitutional guarantees enshrined in Article 22, 19 and 21 of the Constitution and sufficient grounds have to be made out by the detaining authorities to invoke

such provisions. Counsel has relied on the following observation of the Apex Court in paragraph 7, 8 and 9 of the judgment: WP(C)(HC) No. 04 of 2021 Page - 9 of 18 "7. Having considered the submissions made on behalf of the respective parties, we are unable to accept the submissions made on behalf of the State in view of the fact that the decision in Rekha case [(2011) 5 SCC 244], in our view, clearly covers the facts of this case as well. The offences complained of against the appellant are of a nature which can be dealt with under the ordinary law of the land. Taking recourse to the provisions of preventive detention is contrary to the constitutional guarantees enshrined in Articles 19 and 21 of the Constitution and sufficient grounds have to be made out by the detaining authorities to invoke such provisions.

8. In fact, recently, in Yumman Ongbi Lembi Leima v.State of Manipur [(2012) 2 SCC 176] we had occasion to consider the same issue and the three-Judge Bench had held that the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws, as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order.

9. No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act, but that in our view has to be done under the said laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenue may have committed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial. Accordingly, while following the three-Judge Bench decision in Rekha's case [(2011) 5 SCC 244] we allow the appeal and set aside the order passed by the High Court dated 20-7-2011 and also quash the detention order dated 15-2-2011, issued by the Collector and District Magistrate, Ranga Reddy District, Andhra Pradesh."

[Italics supplied by us] WP(C)(HC) No. 04 of 2021 Page - 10 of 18 [12] Based on the above observations of the Apex Court, counsel contended that in Melagarh PS case No.2020/MLG/028 as well as Manu PS case No.2021 MNU 004 the investigating agency has already laid charge sheets against the detenu and the designated courts can very well take care of those charges under the ordinary law and therefore, a preventive detention order is unwarranted. Under the premises aforesaid, counsel has urged for setting aside the preventive detention order. [13] In order to repel the submissions made by the counsel of the petitioner Mr. S.S. Dey, learned Advocate General has contended that the plea raised by the detenu to challenge the order of his detention and the points argued by the counsel of the petitioner in support of such plea are wholly untenable. With regard to the plea raised by the counsel of the petitioner about the the subjective satisfaction of the detaining authority, learned Advocate General has contended that the detention order clearly demonstrates that the detaining authority came to the conclusion about the dire need of the preventive detention

of the petitioner after considering all the relevant materials. It has been argued by learned Advocate General that the adequacy of the material on the basis of which the detaining authority arrived at its satisfaction cannot also be examined in the court of law. Even the reasonableness of the satisfaction of the detaining authority cannot be questioned. Counsel submits that all relevant facts and documents were considered by the detaining authority to arrive at a subjective satisfaction and copies of all those documents were supplied to the detenu. Counsel WP(C)(HC) No. 04 of 2021 Page - 11 of 18 further contends that the detenu was completely aware of the bail orders passed by court in his favour in Melagarh PS case No.2020/MLG/028 and Manu PS case No.2021 MNU 004 and therefore, non supply of the copies of the said orders to him could in no way prejudice the detenu. Moreover, the detaining authority has clearly indicated in the detention order that facts of Melagarh PS case No.2020/MLG/028 and Manu PS case No.2021 MNU 004 were examined by the detaining authority for arriving at the subjective satisfaction about the need of preventive detention of the detenu. As contended by learned Advocate General, in this factual context, the bail orders cannot be treated as vital documents and non consideration of such documents has in no way vitiated the subjective satisfaction of the detaining authority. Learned Advocate General argues that the Apex Court has held that application for bail and an order made thereon, are not always mandatory and such requirement would depend upon facts of each case. To nourish his contention, counsel has relied on the decision of the Apex Court in the case of Sunila Jain vs. Union of India & Anr. reported in (2006) 3 SCC 321 wherein the Apex Court has held as under:

> "19.....The detaining authority will have to satisfy himself on the basis of the materials placed on record, as to whether the order of preventive detention should be passed against the detenu or not. The constitutional mandate can be said to be violated, provided : (1) the impairment has been caused to the subjective satisfaction to be arrived at by the detaining authority; and (2) if relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority.

WP(C)(HC) No. 04 of 2021 Page - 12 of 18

20. In the instant case the order of detention has been taken note of the fact that the detenu had already been released on bail in the following terms:

> "You were arrested on 30-1-2003 and released on bail by the Honble Judge, Special Court of Economic Offences, Bangalore, upon executing a personal bond for an amount of Rs. 10,000/- and security in the form of cash for the like sum."

21. It is also not in dispute that a copy of the order granting bail and order of remand has been furnished to the detenu. In this view of the matter we are of the opinion that non-furnishing of a copy of the application of bail cannot be said to be a ground which impaired the subjective satisfaction of the detaining authority or the same was a relevant fact which was required to be taken into consideration by him and the application for bail was required to be supplied to the detenu. It is now well settled that all the documents placed before the detaining authority are not required to be supplied; only relevant and vital documents are required to be supplied.

22. As in the fact of this case, we are satisfied that the application for bail was not a vital document ,copy whereof was required to be supplied to the detenu, in our opinion, the order of detention is not vitiated. A Division Bench of this Court in K. Varadharaj v. State of T.N. [(2002) 6 SCC 735] upon noticing some of the decisions relied upon by Mr. Mani inter alia held:

> "6. From the above observations, it is clear that placing of the application for bail and the order made thereon are not always mandatory and such requirement would depend upon the facts of each case."
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> [Italics supplied by us] [14] It is contended by learned Advocate General that apparently all documents which were vital and necessary for formation of subjective satisfaction of the detaining authority were placed before the detaining authority before making the detention order on the basis of which the detaining authority arrived at the conclusion that his preventive detention was necessary in order to prevent him from repeating the commission of such offence. In the given facts and circumstances of the case, the bail WP(C)(HC) No. 04 of 2021 Page - 13 of 18 orders cannot be treated as vital and material documents to arrive at a subjective satisfaction inasmuch as such orders did not introduce any variation in the circumstances which necessitated the preventive detention of the detenu.

[15] In this background, the most vital question which falls for our consideration in this case is whether the bail orders might have influenced the detaining authority in the formation of his subjective satisfaction and whether non placement and non consideration of the same would vitiate the order.

[16] We have perused the entire record of the case and considered the submissions of learned counsel representing the parties. [17] It is not in dispute that Melagarh PS case No.2020/MLG/028 was registered against the detenu on 19.06.2020 for commission of offence punishable under sections 148,149,353,325,427 and 307 IPC and section 3 of Prevention of Damage to Public Property Act, 1984 as well as section 20(b)(ii)(C) and section 29, NDPS Act in which the detenu was released on pre arrest bail by an order dated 04.07.2020 of the Special Judge, Sepahijala Judicial District in BA No.43 of 2020 and the ground of bail recorded by the learned Special Judge is that the materials which were placed before the court did not support his involvement in the commission of the alleged offence. It is not also in dispute that after investigation of the case, police laid charge sheet against the detenu. It is also an admitted position that the detenu also got involved in Manu PS case No.2021 MNU WP(C)(HC) No. 04 of 2021 Page - 14 of 18 004 which was registered on 30.01.2021 for commission of offence punishable under sections 20(b)(ii)(C) and 29 NDPS Act in which he was arrested by police and after few days of remand he was released on bail by the Special Judge of Dhalai Judicial District by his order dated 23.03.2021 and in the said case also a supplementary charge sheet dated 21.08.2021 was filed against the detenu. Subsequently, he got involved in another case which was registered under the Bishalgarh police stations as BLG PS case No.059 of 2021 for commission of offence punishable under sections 20(b)(ii)(C) and sections 25, 27A, 29 and 32, NDPS Act and he was granted pre arrest bail by this court on 20.08.2021. On the same day, the impugned order of detention was issued.

[18] From the facts stated above, it would appear that the detenu was granted bail in Melagarh PS case No.2020/MLG/028 and Manu PS case No.2021 MNU 004 prior to the date on which the detention order came to be issued. In the detention order (Annexure-1 to the writ petition) no reference has been made to those bail orders. It is, therefore, assumed that those bail orders were not placed before the detaining authority for his consideration at the time of passing the detention order. Whether such non placement and non consideration of the bail orders has affected the subjective satisfaction of the detaining authority is the issue on which counsel of the parties have placed arguments and counter arguments. [19] Sub section (1) of section 3 of the PITNDPS Act postulates that the Central Government or a State Government or any officer of the WP(C)(HC) No. 04 of 2021 Page - 15 of 18 Central Government not below the rank of Joint Secretary who has been specially empowered by that Government and in case of State Government, any officer not below the rank of Secretary of that Government specially empowered by the State Government for this purpose, if satisfied, that with a view to preventing the person from engaging in illicit traffic in NDPS, his detention is necessary, may make an order directing detention of such person. With regard to "satisfaction" contemplated under sub section (1) of section 3 of the Act, the Apex Court in a catena of decisions has observed that the satisfaction of the detaining authority to which section 3(1) refers is his subjective satisfaction.

[20] The argument which learned Advocate General has urged before us is that in the given fact situation, the bail orders were not vital documents for formation of the subjective satisfaction of the detaining authority and as such non consideration of those bail orders has in no way caused any impairment to the subjective satisfaction of the detaining authority because all relevant facts and vital documents were considered by the detaining authority at the time of passing the detention order. [21] Since, in the detention order there is no reference to the bail orders, the order ex facie says that those orders were not placed before the detaining authority and as a result the detaining authority at the time of passing the detention order was not aware of the fact that the detenu was granted bail in those cases and no challenge against those orders were raised by the State in the higher forum. Absence of awareness of such WP(C)(HC) No. 04 of 2021 Page - 16 of 18 essential facts on the part of the detaining authority, in our view, resulted in non application of mind which obviously affected the subjective satisfaction of the detaining authority. None can say with certainty that such bail orders, if placed before the detaining authority and considered by such authority would not have persuaded him to desist from passing such order of detention. In the case of M. Ahamedkutty vs. Union of India & Anr. reported in (1990) 2 SCC 1 the Apex Court held that non consideration of the bail order amounted to non application of mind. We can profitably quote the following observation made by the Apex Court in paragraph 25 of the judgment which is as under:

> "25. Non-consideration of the bail order would have, therefore, in this case amounted to non-application of mind. In Union of India v. Manoharlal Narang, (1987) 2 SCC 241, the Supreme Courts interim order in pending appeal against High Courts quashing of a previous order of detention against the same detenu was not considered by the detaining authority while making the impugned subsequent order against him. By the interim order Supreme Court had permitted the detenu to be at large on condition of his reporting to the police station daily. It was held that non-

consideration of the interim order which constituted a relevant and important material was fatal to the subsequent detention order on ground of non-application of mind. If the detaining authority considered that order one could not state with definiteness which way his subjective satisfaction would have reacted and it could have persuaded the detaining authority to desist from passing the order of detention. If in the instant case the bail order on condition of the detenus reporting to the customs authorities was not considered the detention order itself would have been affected. Therefore, it cannot be held that while passing the detention order the bail order was not relied on by the detaining authority. In S. Gurdip Singh v. Union of India (1981) 1 SCC 419, following Ichhu Devi Choraria v. Union of India (1980) 4 SCC 531 and Shalini Soni v. Union of India (1980) 4 SCC 544 it was reiterated that if the documents which formed the basis of the order of detention were not served on the detenu along with the grounds of detention, in the eye of law there would be no service WP(C)(HC) No. 04 of 2021 Page - 17 of 18 of the grounds of detention and that circumstances would vitiate his detention and make it void ab initio."

[Italics supplied by us] [22] In our considered view, the bail orders were the most pertinent and proximate matters which cannot be discarded as irrelevant and remote in the given fact situation of the case and as such those orders should have been placed before the detaining authority for consideration and arriving at a subjective satisfaction as contemplated under sub section (1) of section 3 of PITNDPS Act to arrive at a conclusion with regard to the necessity of the preventive detention of the detenu. [23] In the case of Rekha (Supra) which has been relied on by the counsel of the petitioner, the detention order was held to be bad by the Apex Court as the detaining authority was not made aware of the fact that a bail application of the detenu was pending on the date when the detention order was passed. In the case of Rushikesh Tanaji Bhoite (Supra) which has been relied on by the counsel of the petitioner, the Apex Court has clearly observed that non placing and non consideration of a material as vital as the bail order vitiates the subjective decision of the detaining authority.

[24] Therefore, we are of the view that in the given facts and circumstances of the case, the orders whereunder the detenu was granted bail in the cases referred to in the detention order were relevant and vital documents and non consideration of those documents by the detaining WP(C)(HC) No. 04 of 2021 Page - 18 of 18 authority has resulted in his non application of mind which has vitiated the detention order passed by him.

[25] For the foregoing reasons, the petition stands allowed and the impugned detention order dated 20.08.2021 of Bishu Kumar Tripura is set aside.

[26] The detenu is to be set at liberty at once unless his detention is required in any other case.

[27] In terms of the above, the writ petition stands disposed of. Pending application(s), if any, shall also stand disposed of. (S.G. CHATTOPADHYAY), J (INDRAJIT MAHANTY), CJ Rudradeep WP(C)(HC) No. 04 of 2021